

STATE OF NEW YORK
SUPREME COURT: COUNTY OF NEW YORK

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W ■■■ M ■■■■, an infant, and Amiriah Omran:

individually and as a guardian of said infant. :

Plaintiffs, :

-against- :

Index No: 154808/2013

Second Amended Complaint

Jury Demand

The City of New York, New York City Police :

Department, Officers John and Jane Does 1-10, :

in their individual and official capacities, :

Police Officers Robert Larocco, Katherine :

Keating, George Santana, Ahmed Deeb, and :

Sgt. Steven Hernandez, :

Defendants. :

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Amiriah Omran, individually and on behalf of W ■■■ M ■■■■, an infant by his attorneys, The Aboushi Law Firm, respectfully, upon information and belief, alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times mentioned, Plaintiffs, were residents of New York County, City and State of New York.
2. At all times mentioned, Defendant City of New York, was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.

3. At all times mentioned, Defendant New York Police Department is an entity duly organized and existing by virtue of the laws of the State of New York.
4. At all relevant times, Defendant officers John and Jane Does are police officers in their individual and official capacities, at all times acting as agents for the NYPD and City of New York.
5. Police Officers Robert Larocco, Katherine Keating, George Santana, Ahmed Deeb, and Sgt. Steven Hernandez (hereinafter “Officers”) are employees of the City of New York and NYPD and at all relevant times participated in the below conduct and are being sued in their individual and official capacities.
6. Within ninety (90) days after the claim herein arose, the Plaintiffs served a Notice of Claim in writing sworn to on their behalf upon Defendants, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendants, of the nature, time, place, and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.
7. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety days after the happening of the event upon which the claims are based.

8. All conditions and requirements precedent to the commencement of this action have been complied with.
9. The oral examination of the Plaintiffs have been conducted in compliance with Section 50-H of the General Municipal law.
10. This action falls within one or more exceptions set forth in the CPLR.
11. Pursuant to CPLR Section 1602(2)(iv), Defendants are jointly and severally liable for all of Plaintiffs' damages, including but not limited to Plaintiffs' non-economic loss.
12. Plaintiff infant [REDACTED] is a handicapped individual diagnosed with extreme Autism.
13. On approximately October 29, 2012 at approximately 6:00 p.m., at 635 E. 12 Street, NY, NY, 10009, [REDACTED], an individual suffering from mild mental retardation and/or advanced Autism, was assaulted and unlawfully arrested by members of the NYPD, including Defendant officers.
14. The Defendant officers viciously punched the Infant about the head and body, before and after he was taken into custody.
15. The Defendant officers then arrested the Infant and dragged him down stairs, at which time they continued to beat the Infant. The Defendant officers then took him to the hospital, where he was released a few days later without any charges.

16. The assault was not privileged or otherwise authorized by law. As a result of the assault and/or excessive force used, Infant suffered cuts, bruises, and swelling about the body requiring medical attention.
17. At no time did Defendants have legal cause or justification to grab, kick, seize, or touch the Infant, and nor did the Infant consent to this illegal touching nor was it privileged by law.
18. Plaintiff Amiriah Omran is [REDACTED] mother and was forced to observe the Defendants mercilessly assault her handicapped child.

AS AND FOR A SECOND CAUSE OF ACTION

19. Plaintiffs repeat each and every allegation in this Complaint as though fully set forth at length herein.
20. The above described actions did place Infant and his mother in imminent fear of physical contact by approaching the Infant aggressively, cursing at and threatening Infant, and striking Infant. All of the above actions placed Infant in imminent fear of physical contact. At no time did Infant consent to the unlawful actions of the Defendants.
21. Said actions intentionally and negligently caused Plaintiffs severe emotional distress, causing Plaintiffs to experience fear, anxiety, loss of sleep, appetite, and mental anguish.
22. Defendants were negligent in how they handled Plaintiffs.

AS AND FOR A THIRD CAUSE OF ACTION

22. Plaintiffs repeat each and every allegation in this Complaint as though fully set forth at length herein.

23. Defendant police officers at all times relevant, were duly appointed, and acting agents and officers of the City of New York and the NYPD.

24. At all relevant times, Defendant officers were acting under color of law. To wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York and the NYPD.

25. Plaintiffs are and at all relevant times herein, citizens of the United States and resident of New York County in the State and City of New York, and brings this cause of action pursuant to 42 United States Code Section 1983 and 42 United States Code Section 1988 as well as State Civil Rights Laws.

26. The above described conduct of the Defendants resulted in the Plaintiffs being deprived of the following rights under the United States Constitution:

- A. Freedom from assault;
- B. Freedom from excessive force;
- C. Freedom from battery;
- D. Freedom from false arrest;
- E. Freedom from false imprisonment;
- F. Freedom from racial discrimination;
- G. Freedom from emotional distress and imminent fear; and
- H. Equal protection under the law.

27. The Defendants subjected the Plaintiffs to such deprivations, either in a malicious or reckless disregard of the Plaintiffs' rights or with deliberate indifference to those rights used guaranteed under the Fourth and Fourteenth Amendments of the United States Constitution as well as the New York State Constitution and common law.

28. The direct and proximate result of Defendants' acts is that Plaintiffs have suffered, and continues to suffer, injuries of a physical and psychological nature.

AS AND FOR A FOURTH CAUSE OF ACTION

29. Plaintiffs repeat each and every allegation in this Complaint as though fully set forth at length herein.

30. Defendants City of New York and NYPD has grossly failed to train and adequately supervise its Officers so as to prevent the assault and battery as described above.

31. This is one of many cases in which police officers fail to exercise caution, restraint, and control when dealing with handicapped citizens.

32. The City of New York and NYPD were negligent by failing to implement a policy with its officers who, absent the consent of Infant would be prevented from perpetrating the above described conduct.

33. The City of New York and NYPD are negligent due to their failure to implement a policy with its officer, or actively enforce the law and train its officers and personnel about it.

34. The Defendants were negligent in how they handled the Infant.

35. The foregoing acts, omissions and systematic failures are customs and policies of the City of New York and NYPD which caused Defendant officers to perpetrate and assault and battery to Infant's person in the view of his mother.

AS AND FOR A FIFTH CAUSE OF ACTION

36. Plaintiffs repeat each and every allegation in this Complaint as though fully set forth at length herein.

37. Defendants City of New York and NYPD were negligent in that prior to and at the time of the acts complained herein, due to the prior history of Defendant Officers, knew or should have known the bad disposition of said officers and Defendants had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that the Defendant Officers were not suitable to be hired and employed by the City of New York and NYPD, and that due to their lack of training, Defendant Officers should have had adequate supervision so that they would not perpetrate the actions described above.

38. Thus the Defendant is guilty of Negligent Hiring and Supervision, failure to train, and Respondent Superior.

WHEREFORE, Plaintiffs demand judgment against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the jurisdictional limit of any lower court where otherwise have jurisdiction, together with attorney's fees and costs of bringing this case and punitive damages.

Dated: New York, NY
June 21, 2016

s/ Aymen A. Aboushi
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STATE OF NEW YORK
SUPREME COURT: COUNTY OF NEW YORK

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in their individual and official capacities,
Police Officers Robert Larocco, Katherine
Keating, George Santana, Ahmed Deeb, and
Sgt. Steven Hernandez,

Defendants.

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Second Amended Summons

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the State of New York, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, NY
June 21, 2016

s/ Aymen A. Aboushi
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